

OPEN MEETING ITEM

ORIGINAL



0000073177

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

ARIZONA CORPORATION COMMISSION

22

DATE: MAY 17, 2007

DOCKET NO: T-04102A-06-0176

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

BROADBAND DYNAMICS, L.L.C.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 29, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 5, 2007, AND JUNE 6, 2007

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

RECEIVED

2007 MAY 17 P 2:51

AZ CORP COMMISSION
DOCKET CONTROL

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission

DOCKETED

MAY 17 2007

DOCKETED BY	nr
-------------	----

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 COMMISSIONERS

4 MIKE GLEASON - Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 KRISTIN K. MAYES
8 GARY PIERCE

9 IN THE MATTER OF THE APPLICATION OF
10 BROADBAND DYNAMICS, L.L.C. FOR A
11 CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD LOCAL
13 EXCHANGE SERVICES.

DOCKET NO. T-04102A-06-0176

DECISION NO. _____

ORDER

14 Open Meeting
15 June 5 and 6, 2007
16 Phoenix, Arizona

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On March 17, 2006, Broadband Dynamics, L.L.C. ("Broadband" or "Applicant") filed
22 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
23 provide competitive resold local exchange telecommunications services within the State of Arizona.

24 2. Applicant is a switchless reseller that purchases telecommunications services from a
25 variety of carriers for resale to its customers.

26 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
27 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
28 of the Commission.

4. Applicant has authority to transact business in the State of Arizona.

5. On September 22, 2006, Applicant filed an Affidavit of Publication verifying that it
had published notice of its application that complies with the Commission's notice requirements.

6. On May 1, 2007, the Commission's Utilities Division Staff ("Staff") filed a Staff

1 Report recommending approval of the application, subject to certain conditions.

2 7. Regarding Applicant's technical capability to provide the requested services, Staff
3 stated that Broadband currently provides local exchange service in 32 states and has no outstanding
4 consumer complaints pending.

5 8. Regarding Applicant's financial capability to provide the requested services, Staff
6 stated that Applicant provided unaudited financial statements for the twelve months ending
7 December 31, 2005, which list assets in excess of \$4.4 million, equity in excess of \$3.5 million, and
8 net income of \$2.0 million.

9 9. Regarding establishing rates and charges, and based on information obtained from the
10 Applicant, Staff has determined that Applicant's fair value rate base ("FVRB") is zero and is too
11 small to be useful in either a fair value analysis or in setting rates. Staff further stated that in general,
12 rates for competitive services are not set according to rate of return regulation. Staff has reviewed the
13 rates to be charged by the Applicant and believes they are just and reasonable, as they are comparable
14 to the rates of other competitive local exchange companies operating in Arizona and comparable to
15 the rates the Applicant charges in other jurisdictions in which applications to provide service are
16 pending. Therefore, while Staff considered the FVRB information submitted by the Applicant, that
17 information should not be given substantial weight in this analysis.

18 10. Staff stated that Applicant has no market power and that the reasonableness of its rates
19 will be evaluated in a market with numerous competitors. Staff believes that the rates in Applicant's
20 proposed tariffs for its competitive services will be just and reasonable and recommends that the
21 Commission approve them.

22 11. Staff recommended that Applicant's application for a Certificate to provide
23 competitive resold local exchange telecommunications services be granted subject to the following
24 conditions:

25 (a) That the Applicant complies with all Commission Rules, Orders and other
26 requirements relevant to the provision of intrastate telecommunications
services.

27 (b) That the Applicant abides by the quality of service standards that the
28 Commission approved for Qwest in Docket No. T-01051B-93-0183.

- 1 (c) That the Applicant be prohibited from barring access to alternative local
2 exchange service providers who wish to serve areas where the Applicant is the
3 only provider of local exchange service facilities.
- 4 (d) That the Applicant be required to notify the Commission immediately upon
5 changes to the Applicant's name, address or telephone number.
- 6 (e) That the Applicant cooperates with Commission investigations including, but
7 not limited to, customer complaints.
- 8 (f) That the rates proposed by this filing are for competitive services. In general,
9 rates for competitive services are not set according to rate of return regulation.
10 Staff obtained information from the company and has determined that its fair
11 value rate base is zero.
- 12 (g) That the Applicant offers Caller ID with the capability to toggle between
13 blocking and unblocking the transmission of the telephone number at no
14 charge.
- 15 (h) That the Applicant offers Last Call Return service that will not return calls to
16 telephone numbers that have the privacy indicator activated.

17 12. Staff further recommended that Applicant's resold local exchange Certificate should
18 be conditioned upon the Applicant filing a conforming tariff for each service within its certificated
19 service area within 365 days from the date of an Order in this matter, or 30 days prior to providing
20 service, whichever comes first. The tariff submitted must conform to the application and state that
21 the Applicant does not collect advances, deposits and/or prepayments from its customers.

22 13. Staff also recommended the following:

- 23 (a) That Applicant's Certificate should be conditioned upon the procurement of a
24 performance bond or irrevocable sight draft Letter of Credit as described
25 below, and filing proof of that performance bond or irrevocable sight draft
26 Letter of Credit within 365 days from the date of an Order in this matter, or 30
27 days prior to providing service, whichever comes first.
- 28 (b) That Applicant be required to procure a performance bond or an irrevocable
sight draft Letter of Credit, at the discretion of the Applicant, in the initial
amount of \$25,000, with the minimum bond amount of \$25,000 to be
increased if at any time it would be insufficient to cover all advances, deposits,
prepayments collected from its customers, in the following manner: The bond
amount should be increased in increments of \$12,500, with such increases to
occur whenever the total amount of the advances, deposits or prepayments
reaches a level within \$2,500 under the actual bond amount or irrevocable
sight draft Letter of Credit.
- (c) If the Applicant desires to discontinue service, it must file an application with

1 the Commission pursuant to AAC R14-2-1107¹. Failure to meet this
2 requirement should result in forfeiture of the Applicant's performance bond or
irrevocable sight draft Letter of Credit.

- 3 (d) File the original performance bond or irrevocable sight draft Letter of Credit
4 with the Commission's Business Office and copies of the performance bond or
5 irrevocable sight draft Letter of Credit with Docket Control, as a compliance
6 item in this docket, within 30 days of the effective date of this Decision. The
7 performance bond or irrevocable sight draft Letter of Credit must remain in
8 effect until further order of the Commission. The Commission may draw on
9 the performance bond or irrevocable sight draft Letter of Credit, on behalf of,
10 and for the sole benefit of the Applicant's customers, if the Commission finds
11 in its discretion, that the Applicant is in default of its obligations arising from
12 its Certificate. The Commission may use the performance bond or irrevocable
13 sight draft Letter of Credit funds, as appropriate, to protect the Company's
14 customers and the public interest and take any and all actions the Commission
15 deems necessary, and its discretion, including, but not limited to returning
16 prepayments or deposits collected from the Company's customers.

17 14. Staff recommended that if the Applicant fails to meet the timeframes outlined in
18 Findings of Fact Nos. 12 and 13 above, then Applicant's resold local exchange Certificate should
19 become null and void after due process

20 15. The rates proposed by these filings are for competitive services.

21 16. Staff's recommendations as set forth herein are reasonable.

22 17. Applicant's fair value rate base is determined to be zero for purposes of this
23 proceeding.

24 CONCLUSIONS OF LAW

25 1. Applicant is a public service corporation within the meaning of Article XV of the
26 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

27 2. The Commission has jurisdiction over Applicant and the subject matter of the
28 application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold local exchange telecommunications services is in the
public interest.

¹ Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of service and/or abandonment of its service area.

5. Applicant is a fit and proper entity to receive the Certificate as conditioned herein for providing competitive resold local exchange services in Arizona.

6. Staff's recommendations in Findings of Fact Nos. 11, 12, 13 and 14 should be adopted.

7. Applicant's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. Applicant's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Broadband Dynamics, L.L.C. for a Certificate of Convenience and Necessity for authority to provide competitive resold local exchange services is hereby granted conditioned upon its compliance with the conditions recommended by Staff as set forth above.

IT IS FURTHER ORDERED that if Broadband Dynamics, L.L.C. fails to meet the timeframes outlined in Findings of Fact Nos. 12 and 13, above, then the resold local exchange Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 11, 12, 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that Broadband Dynamics, L.L.C. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 11, 12, 13 and 14 above.

• • •

• • •

...

...

...

• • •

• • •

1 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

3
4
5 CHAIRMAN

COMMISSIONER

6
7
8 COMMISSIONER

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Director of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of Phoenix,
13 this ____ day of _____, 2007.

14 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

15
16 DISSENT _____

17
18 DISSENT _____

19 MES:db

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST FOR: BROADBAND DYNAMICS, L.L.C.

DOCKET NO.: T-04102A-06-0176

Lance J.M. Steinhart, Esq.
LANCE J.M. STEINHART, P.C.
1720 Windward Concourse, Suite 250
Alpharetta, GA 30005

Ernest G. Johnson
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Christopher K. Kempley
Legal Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007